Supreme Court, U. S.
FILED
JUN 23 1979
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1905

NEW YORK SHIPPING ASSOCIATION, INC.; SEA-LAND SERVICE, INC.; INTERNATIONAL TERMINAL OPERATING CO., INC.; JOHN W. MCGRATH CORP.; PITTSTON STEVEDORING CORP.; and UNIVERSAL MARITIME SERVICE, CORP.,

Petitioners,

v.

CONSOLIDATED EXPRESS, INC. and TWIN EXPRESS, INC.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

ALFRED A. GIARDINO
Counsel for Petitioners, New York Shipping Association, Inc.; International Terminal Operating Co., Inc.; John W. McGrath Corp.; Pittston Stevedoring Corp.; and, Universal Maritime Service Corp.

LORENZ, FINN, GIARDINO & LAMBOS
25 Broadway
New York, New York 10004
(212) 943-2470

Of Counsel,
CONSTANTINE P. LAMBOS
DONATO CARUSO
NICHOLAS G. MAGLARAS

JAMES W. B. BENKARD
Counsel for Petitioner, Sea-Land Service, Inc.

DAVIS POLK & WARDWELL
One Chase Manhattan Plaza
New York, New York 10005
(212) 422-3400

Of Counsel,
MARY M. HOAG

TABLE OF CONTENTS

	PAGE
Opinions Below	1
Jurisdiction	2
Statutes Involved	2
Questions Presented	2
Statement Of The Case	3
The Labor Controversy	3
The Proceedings Below	7
A. The Decision of the District Court	8
B. The Decision of the Court of Appeals	10
Reasons for Granting the Writ	12
1. Novel and Monumental Questions of National Importance	12
2. Non-Statutory Labor Exemption—Conflict With Decisions of This Court and of Other Circuits	13
3. The Decision Below Effectively Abolishes the Non-Statutory Labor Exemption	16
4. Rejection of Rule of Reason Is Contrary to Determinations by Other Circuits	17
5. Other Courts Have Denied Standing to Illegal Businesses	19
Conclusion	21

Table of Authorities

Cases:

Ackerman-Chillingworth v. *Pacific Electrical Contractors,* 579 F.2d 484 (9th Cir. 1978), *cert. denied,* —— U.S. ——, 59 L.Ed.2d 56 (U.S. Jan. 9, 1979) (No. 78-703)	19

PAGE

Adolph Coors Co. v. *A&S Wholesalers, Inc.*, 561 F. 2d 807 (10th Cir. 1977) 20

Allen Bradley Co. v. *Local No. 3, IBEW*, 325 U.S. 797 (1945) 15, 17

Amalgamated Meat Cutters v. *Jewel Tea Co.*, 381 U.S. 676 (1965) 15, 16, 17, 19

Amalgamated Meat Cutters & Butcher Workmen of No. America, Local Union No. 576 v. *Wetterau Foods, Inc.*, —— F.2d ——, 101 L.R.R.M. 2171 (8th Cir. May 2, 1979) (No. 78-1726) 19

American Bankers Club, Inc. v. *American Express Co.*, 1977-1 CCH Trade Cas. ¶ 61,247 (D.D.C. Jan. 18, 1977) (No. 76-1730) 20

Balicer v. *International Longshoremen's Ass'n*, 364 F. Supp. 205 (D.N.J.), *aff'd mem.*, 491 F.2d 748 (3d Cir. 1973) 7

Balicer v. *International Longshoremen's Ass'n*, 86 L.R.R.M. 2559 (D.N.J. 1974) (No. 1155-73) 7

Bodine Produce, Inc. v. *United Farm Workers Organizing Comm.*, 494 F.2d 541 (9th Cir. 1974) 14-15

Broadcast Music, Inc. v. *Columbia Broadcasting System, Inc.*, 47 U.S.L.W. 4359 (U.S. Apr. 17, 1979) (Nos. 77-1578 and 77-1583) 18

California Dump Truck Owners Ass'n, Inc. v. *Associated General Contractors*, 562 F.2d 607 (9th Cir. 1977) 14

Carroll v. *Protection Maritime Ins. Co.*, 512 F.2d 4 (1st Cir. 1975) 18

PAGE

Commerce Tankers Corp. v. *National Maritime Union*, 553 F.2d 793 (2d Cir.), *cert. denied*, 434 U.S. 923 (1977) 13, 14, 19

Connell Construction Co. v. *Plumbers & Steamfitters Local Union No. 100*, 421 U.S. 616 (1975) ...10, 17, 19

Continental TV, Inc. v. *GTE Sylvania, Inc.*, 433 U.S. 36 (1977) 18

Cottonwood Mall Shopping Center, Inc. v. *Utah Power & Light Co.*, 440 F.2d 36 (10th Cir.), *cert. denied*, 404 U.S. 857 (1971) 20

Embry-Riddle Aeronautical University v. *Ross Aviation, Inc.*, 504 F.2d 896 (5th Cir. 1974) 14

Federal Maritime Commission v. *Pacific Maritime Ass'n*, 435 U.S. 40 (1978) 16

Gough v. *Rossmoor Corp.*, 585 F.2d 381 (9th Cir. 1978), *cert. denied*, 47 U.S.L.W. 3571 (U.S. Feb. 26, 1979) (No. 78-1002) 18

Health Corp. of America, Inc. v. *New Jersey Dental Ass'n*, 424 F. Supp. 931 (D.N.J. 1977), *mandamus denied without opinion sub nom. New Jersey Dental Ass'n* v. *Brotman*, No. 77-1268 (3d Cir. Feb. 24, 1977), *mandamus denied*, 434 U.S. 812 (1977) 20

Heath v. *Aspen Skiing Corp.*, 325 F. Supp. 223 (D. Colo. 1971) 20

Humphrey v. *International Longshoremen's Ass'n*, 401 F. Supp. 1401 (E.D. Va. 1975), *rev'd*, 548 F.2d 494 (4th Cir. 1977) 8

Intercontinental Container Transport Corp. v. *New York Shipping Ass'n*, 426 F.2d 884 (2d Cir. 1970) 6, 13, 14

PAGE

International Brotherhood of Electrical Workers, Local Union No. 474 v. *Sammarco Electrical Co.*, —— F. Supp. ——, 100 L.R.R.M. 2629 (W.D. Tenn. Jan. 11, 1979) (Nos. 77-2579 and 78-2040) .. 15

International Longshoremen's Ass'n v. *NLRB*, 537 F.2d 706 (2d Cir. 1976), *cert. denied*, 429 U.S. 1041 (1977) 14

International Longshoremen's Ass'n, Local 1575 v. *NLRB*, 560 F.2d 1439 (1st Cir. 1977) 8

International Longshoremen's Ass'n (Associated Tranport, Inc.), 231 N.L.R.B. 351 (1977), *appeal pending sub nom. International Longshoremen's Ass'n* v. *NLRB* (D.C. Cir. Nos. 77-1735 and 77-1758) 8

International Longshoremen's Ass'n (Consolidated Express, Inc.), 221 N.L.R.B. 956 (1975), *enf'd*, 537 F.2d 706 (2d Cir. 1976), *cert. denied*, 429 U.S. 1041 (1977) 8

International Longshoremen's Ass'n (Dolphin Forwarding, Inc.), 236 N.L.R.B. No. 42 (1978), *appeal pending sub nom. International Longshoremen's Ass'n* v. *NLRB* (D.C. Cir. No. 78-1510) .. 8

Keogh v. *Chicago Northwestern Ry. Co.*, 260 U.S. 156 (1922) 20

Lamp Liquors, Inc. v. *Adoph Coors Co.*, 563 F.2d 425 (10th Cir. 1977) 20

Lewis v. *Pennington*, 400 F.2d 806 (6th Cir.), *cert. denied*, 393 U.S. 983 (1968) 15

Link v. *Mercedes-Benz of North America, Inc.*, 550 F.2d 860 (3d Cir.) (*en banc*), *cert. denied*, 431 U.S. 933 (1977) 12

PAGE

Mackey v. *National Football League*, 543 F.2d 606 (8th Cir. 1976), *cert. dismissed*, 434 U.S. 801 (1977) 18, 19

Maltz v. *Sax*, 134 F.2d 2 (7th Cir.), *cert. denied*, 319 U.S. 772 (1943) 20

Martin v. *Phillips Petroleum Co.*, 365 F.2d 629 (5th Cir.), *cert. denied*, 385 U.S. 991 (1966) 20

McCourt v. *California Sports, Inc.*, No. 78-1462 (6th Cir. May 22, 1979) 14

Memorex Corp. v. *International Business Machines Corp.*, 555 F.2d 1379 (9th Cir. 1977) 20

Milbert v. *Bison Laboratories, Inc.*, 260 F.2d 431 (3d Cir. 1958) 12

Murphy Tugboat Co. v. *Shipowners & Merchants Tugboat Co.*, No. C-74-0189-WWS (N.D. Calif. March 6, 1979) 15

National Dairy Prod. Corp. v. *Milk Drivers & Dairy Employees, Union Local 680*, 308 F. Supp. 982 (S.D.N.Y. 1970) 14

Okefenokee Rural Electric Mem. Corp. v. *Florida Power & Light Co.*, 214 F.2d 413 (5th Cir. 1954) 20

Oreck Corp. v. *Whirlpool Corp.*, 579 F.2d 126 (2d Cir.) (*en banc*), *cert. denied*, —— U.S. ——, 99 S. Ct. 340 (U.S. Oct. 30, 1978) (No. 78-347) 18

Pearl Music Co. v. *Recording Industry Ass'n of America, Inc.*, 460 F. Supp. 1060 (C.D. Calif. 1978) 20

PAGE

Perma Life Mufflers, Inc. v. *International Parts Corp.*, 392 U.S. 134 (1968) 20

Redfield v. *American Federation of Musicians*, No. 78-7530 (2d Cir. Mar. 1, 1979) 14

Republic Productions, Inc. v. *American Federation of Musicians*, 245 F. Supp. 475 (S.D.N.Y. 1965).. 14

Scooper Dooper, Inc. v. *Kraftco Corp.*, 494 F.2d 840 (3d Cir. 1974) 14

Signatory Negotiating Comm. v. *Local 9, Int'l Union of Operating Engineers*, 447 F. Supp. 1384 (D. Colo. 1978) 15

Smith v. *Pro Football, Inc.*, 593 F.2d 1173 (D.C. Cir. 1978) 18, 19

South-East Coal Co. v. *Consolidation Coal Co.*, 434 F.2d 767 (6th Cir. 1970) 15

Suburban Beverages, Inc. v. *Pabst Brewing Co.*, 462 F. Supp. 1301 (E.D. Wisc. 1978) 15

Turner v. *American Bar Ass'n*, 407 F. Supp. 451 (N.D. Ind. 1975), *aff'd without opinion sub nom. Taylor* v. *Montgomery*, 539 F.2d 715 (7th Cir. 1976), and *aff'd sub. nom. Pilla* v. *American Bar Ass'n*, 542 F.2d 56 (8th Cir. 1976) (multi-district case) 20

United Mine Workers v. *Pennington*, 381 U.S. 657 (1965) 15, 17, 19

Statutes: PAGE

15 U.S.C. § 1 ..... 2, 9

15 U.S.C. § 3 ..... 2, 9

15 U.S.C. § 15 .....*Passim*

15 U.S.C. § 17 18

15 U.S.C. § 26 .....*Passim*

28 U.S.C. § 1254(1) 2

28 U.S.C. § 1292(b) 10, 12

29 U.S.C. § 101 10

29 U.S.C. § 151 17

29 U.S.C. § 158(b)(4) .....*Passim*

29 U.S.C. § 158(e) .....*Passim*

29 U.S.C. § 160(l) 7

29 U.S.C. § 171 5

29 U.S.C. § 187 ..... 9, 10

Rules:

Fed. R. App. P. 5 10

Fed. R. App. P. 41(b) 2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No.

NEW YORK SHIPPING ASSOCIATION, INC.; SEA-LAND SERVICE, INC.; INTERNATIONAL TERMINAL OPERATING CO., INC.; JOHN W. McGRATH CORP.; PITTSTON STEVEDORING CORP.; and UNIVERSAL MARITIME SERVICE, CORP.,

Petitioners,

v.

CONSOLIDATED EXPRESS, INC. and TWIN EXPRESS, INC.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Petitioners pray that a writ of certiorari issue to review the judgment entered in this case on April 16, 1979 by the United States Court of Appeals for the Third Circuit.

Opinions Below

The opinion of the Court of Appeals is not yet reported officially.[1] A copy is reproduced as Appendix A in the separately bound appendix to this petition (App. A at 1a-71a).[2] The opinion of the United States District Court for

[1] It has been unofficially reported in 1979-1 CCH Trade Cas. ¶ 62,589; 86 CCH Lab. Cas. ¶ 11,280; and, 100 L.R.R.M. 3170.

[2] References are to pages of the separately bound appendix.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No.

NEW YORK SHIPPING ASSOCIATION, INC.; SEA-LAND SERVICE, INC.; INTERNATIONAL TERMINAL OPERATING CO., INC.; JOHN W. MCGRATH CORP.; PITTSTON STEVEDORING CORP.; and UNIVERSAL MARITIME SERVICE, CORP.,

Petitioners,

v.

CONSOLIDATED EXPRESS, INC. and TWIN EXPRESS, INC.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Petitioners pray that a writ of certiorari issue to review the judgment entered in this case on April 16, 1979 by the United States Court of Appeals for the Third Circuit.

Opinions Below

The opinion of the Court of Appeals is not yet reported officially.[1] A copy is reproduced as Appendix A in the separately bound appendix to this petition (App. A at 1a-71a).[2] The opinion of the United States District Court for

[1] It has been unofficially reported in 1979-1 CCH Trade Cas. ¶ 62,589; 86 CCH Lab. Cas. ¶ 11,280; and, 100 L.R.R.M. 3170.

[2] References are to pages of the separately bound appendix.

the District of New Jersey (App. C at 74a-120a) appears at 452 F. Supp. 1024 (D.N.J. 1977).

Jurisdiction

The judgment (App. B at 72a-73a) of the Court of Appeals for the Third Circuit was entered on April 16, 1979.[3] This petition is being filed within 90 days thereof. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

Statutes Involved

The relevant statutes, which are reproduced in the separately bound appendix (App. G at 128a-133a), are: §§ 8(b)(4) and 8(e) of the Labor Management Relations Act, 1947, as amended ("LMRA"), 29 U.S.C. §§ 158(b)(4) and 158(e); §§ 1 and 3 of the Sherman Act, 1890, as amended, 15 U.S.C. §§ 1 and 3; and, §§ 4 and 16 of the Clayton Act, 1914, as amended, 15 U.S.C. §§ 15 and 26.

Questions Presented

1. Does national labor and antitrust policy require that a collective bargaining provision should automatically lose the protection of the non-statutory labor exemption from the antitrust laws if the provision has been held to violate the Labor Management Relations Act?

2. Does national labor and antitrust policy require that the non-statutory labor exemption from the treble damage provisions of the antitrust laws should be forfeited unless

[3] On May 24, 1979, the Third Circuit entered an order, pursuant to Rule 41(b) of the Federal Rules of Appellate Procedure, staying its mandate consisting of its judgment and opinion in this case.

the challenged collective bargaining provision is the least competitively restrictive alternative that could have been negotiated?

3. Is the prevailing rule of reason, rather than the mechanical *per se* rule, the proper standard for adjudicating the legality under the antitrust laws of a non-exempt collective bargaining provision?

4. Does a private corporation, which is illegally operating without the statutory permit of authority required by federal transportation law, have the right to recover treble damages in a private antitrust action for injury to its unlawful business?

Statement Of The Case

The Labor Controversy

This case is the latest chapter in the turbulent history of a labor struggle that has raged in the shipping industry without interruption for the past 20 years. In the shipping industry the union, International Longshoremen's Association, AFL-CIO ("ILA"), has resisted the encroachments of advancing technology which has decimated the number of its members and diminished their work opportunities. The focus of contention has been the industry's increasingly prevalent use of large cargo containers to increase the efficiency of shipping operations by decreasing the need for the traditional piece-by-piece loading and unloading of ocean borne cargo by ILA represented longshoremen (App. A at 5a-6a).

From the advent of containerization in the late 1950's to the present, ILA and the employers of its member-longshoremen have disagreed about the use of containers (App. A at 5a-7a). The shipping employers, through their collective bargaining representative, petitioner New York

Shipping Association, Inc. ("NYSA"),[4] have consistently taken the position that their containers should be permitted to move on and off the docks without any ILA imposed restrictions. Conversely, ILA has strenuously resisted the use of containers. It has argued that the container itself is a part of the hold of a steamship vessel and should be loaded and unloaded by ILA longshoremen piece-by-piece and package-by-package, as had been done traditionally (App. A at 5a-6a; App. C at 83a-85a).

The first contractual attempt to resolve the issue of containerization was the 1959 collective bargaining agreement between ILA and NYSA. Hundreds of grievances, dozens of work stoppages and wildcat strikes by ILA during the succeeding 10 year period evidenced the inadequacy of the 1959 contractual solution. During this time ILA consistently demanded the right to load and unload ("stuff" and "strip") the cargo in the containers (App. A at 5a-6a; App. C at 109a).

In 1964, the United States Department of Labor urged both ILA and NYSA to resolve their differences through collective bargaining. It recommended that the parties be guided by the equitable principle that while management may introduce new technology and improve manpower utilization, it has an accompanying obligation to assure a direct measure of job security for its work force (App. C at 109a).

After petitioner Sea-Land Service, Inc. ("Sea-Land") introduced the first fully containerized vessel into the

---

[4] NYSA is a New York not-for-profit membership corporation which acts, on behalf of its members, as a multi-employer collective bargaining association in the negotiation and administration of labor contracts with ILA. The steamship carrier petitioner, Sea-Land Service, Inc., and the stevedore petitioners, International Terminal Operating Co., Inc., John W. McGrath Corp., Pittston Stevedoring Corp. and Universal Maritime Service Corp., are members of NYSA (App. A at 4a-5a).

major North Atlantic trade in 1967 and other steamship carrier members of NYSA announced plans to embark upon full container operations, ILA renewed its demand to stuff and strip all containers (App. A at 6a). NYSA rejected this demand and a 57-day strike ensued. The Presidential Board of Inquiry, established pursuant to the national emergency provisions of the Taft-Hartley Act, 29 U.S.C. § 171 *et seq.*, reported that one of the issues separating the parties was the consequences of containerization (App. C at 109a). Under unrelenting strike pressure, and with the assistance of an advisor appointed by the President of the United States (App. C at 109a), NYSA reluctantly reached agreement with ILA. The resulting collective bargaining agreement contained the Rules on Containers ("Rules")—essentially the same contractual provisions as those being challenged in the present case.

The Rules provided that any export container which was loaded with the individual cargo lots of several shippers ("consolidated"), at a local off-pier facility located within 50 miles of the Port of New York, would be stripped and its contents restuffed into a container at pierside by ILA longshoremen. The converse applied to an import consolidated container; its contents would be stripped at the pier if it contained the shipments of several consignees and was destined for unloading at an off-pier facility within the local 50 mile port area (App. A at 6a).

Those companies engaged in consolidation work at the off-pier facilities employ men who are either non-unionized or belong to the International Brotherhood of Teamsters, rather than the ILA. Two such companies, Consolidated Express Inc. and Twin Express Inc. are the respondents in this proceeding.

Shortly after the Rules were formalized in the 1968 labor contract, their validity was upheld—first, under the LMRA by a Regional Director and General Counsel of the National Labor Relations Board ("NLRB") (App. C

at 110a), and then under the antitrust laws by the United States Court of Appeals for the Second Circuit (App. A at 6a-7a) in *Intercontinental Container Transport Corp.* v. *New York Shipping Ass'n,* 426 F.2d 884 (2d Cir. 1970) (hereinafter *"ICTC"*).

Despite the contractual formality of the Rules, ILA continued to assert that NYSA and its members were permitting, if not encouraging, violations of the labor contract by shipping consolidated containers even though their contents had not been handled by ILA longshoremen at the docks, thus depriving ILA members of their traditional work (App. A at 7a; App. C at 78a). Faced with the ILA strike threat to halt the movement of all containers if the Rules were not effectively enforced, the shipping employers capitulated in 1973 to an amendment to the collective labor contract, known as the Dublin Supplement, that was designed to eliminate the violations cited by ILA (App. A at 7a, 71a).

The shipping employers did enforce the Dublin Supplement for a period of months until enjoined and it is that enforcement which allegedly caused respondents damage and led directly to this action. At the same time, the shipping employers also suffered severe economic loss. They paid hundreds of thousands of dollars in penalties to the ILA for violations of the Rules and Dublin Supplement. They absorbed substantially increased and unrecouped labor costs for pierside stuffing and stripping. They lost the business of valued customers,[5] despite efforts to assist these customers in mitigating the effect of the Rules and Dublin Supplement (App. A at 58a).

---

[5] Respondents, Consolidated Express, Inc. and Twin Express, Inc., as well as other consolidators, were primarily customers of petitioner Sea-Land and other steamship carriers—not their competitors. In fact, Sea-Land and the other carriers made it possible for consolidators to go into business, originally, by formulating special FAK tariff rates. The FAK rate in effect gave the consolidators a discount on the carriers' freight charges for containers that were loaded and unloaded away from the docks.

This case does not involve an antitrust conspiracy between labor and management in the shipping industry to effectuate a business boycott of consolidators for the economic benefit of the shipping employers. Everyone who has been involved with or considered the Rules—from the Presidential advisor who assisted in their formulation, to the Department of Labor, to the Taft-Hartley Board of Inquiry, to the NLRB, to the courts below—has recognized that the interests, goals and purposes of the ILA have been fundamentally at odds with those of the shipping employers, as well as the consolidators whose labor force is represented by a different union. This case is a classic example of a labor union's efforts to exact from its members' employers what the union and the employers, on the basis of prior NLRB and judicial decisions (App. C at 110a), considered to be valid contractual protection for the job security of longshoremen, who were faced with a drastic loss of work opportunities because of the technological job displacement caused by containerization.

The Proceedings Below

Following implementation of the Dublin Supplement in 1973, respondents commenced a series of actions in various forums which culminated in the present case. They filed unfair labor practice charges with the NLRB which initially resulted in the issuance of preliminary injunctions under LMRA § 10(l), 29 U.S.C. § 160(l) (App. A at 8a-9a). *Balicer* v. *International Longshoremen's Ass'n,* 364 F. Supp. 205 (D.N.J.), *aff'd mem.,* 491 F.2d 748 (3d Cir. 1973); *Balicer* v. *International Longshoremen's Ass'n,* 86 L.R.R.M. 2559 (D.N.J. 1974) (No. 1155-73).

The charges were then dismissed on the merits by NLRB Administrative Law Judge Arnold Ordman, who determined that the Rules and Dublin Supplement were lawful work preservation provisions (App. A at 9a). However, the NLRB reversed. It held, contrary to the earlier 1970 determinations of its Regional Director and General

Counsel, that the Rules and Dublin Supplement violated LMRA § 8(e), and that ILA's coercion of the shipping employers to enforce these contractual provisions violated the secondary boycott proscriptions of LMRA § 8(b)(4) (App. A at 10a). *International Longshoremen's Ass'n (Consolidated Express, Inc.),* 221 N.L.R.B. 956 (1975), *enf'd,* 537 F.2d 706 (2d Cir. 1976), *cert. denied,* 429 U.S. 1041 (1977).[6]

A. The Decision of the District Court

Shortly after the Second Circuit's affirmance of the NLRB determination, respondents instituted the present antitrust action for treble damages under § 4 of the Clayton Act, 15 U.S.C. § 15 (App. A at 11a).[7] Respondents then

[6] Circuit Judge Wilfred Feinberg of the Second Circuit dissented. He concluded that "the Board's decision that work preservation was not the union objective rests upon a basic error of law." 537 F.2d 706, 712. The adjudication of this fundamental question of labor law in a growing number of cases involving the legality of the Rules and Dublin Supplement under LMRA §§ 8(b)(4) and 8(e) has engendered the same divergence of judicial opinion exemplified by Judge Feinberg's dissent. *See, e.g., Humphrey* v. *Int'l Longshoremen's Ass'n,* 401 F. Supp. 1401 (E.D. Va. 1975), *rev'd,* 548 F.2d 494 (4th Cir. 1977) (Circuit Judge Craven dissenting); *Int'l Longshoremen's Ass'n (Associated Transport, Inc.),* 231 N.L.R.B. 351 (1977) (Board Chairman Fanning dissenting), *appeal pending sub nom. Int'l Longshoremen's Ass'n* v. *NLRB* (D.C. Cir. Nos. 77-1735 and 77-1758). *See also,* the comments of District Judge Stern in this case (App. C at 106a-107a, n.14). Other cases that have addressed the legality of the Rules and Dublin Supplement under federal labor law include *Int'l Longshoremen's Ass'n, Local 1575* v. *NLRB,* 560 F.2d 439 (1st Cir. 1977) (involving the enforcement of similar contractual provisions in Puerto Rico) and *Int'l Longshoremen's Ass'n (Dolphin Forwarding, Inc.),* 236 N.L.R.B. No. 42 (1978), *appeal pending sub nom. Int'l Longshoremen's Ass'n* v. *NLRB* (D.C. Cir. No. 78-1510) (consolidated with the pending review before the D.C. Circuit of *Associated Transport, supra*).

[7] In addition to petitioners, ILA and two other members of NYSA, *viz.,* the steamship carrier, Seatrain Lines, Inc., and the

(footnote continued on following page)

sought summary judgment contending (1) that the NLRB's prior finding of an LMRA § 8(e) violation was entitled to offensive collateral estoppel effect and automatically removed from the Rules and Dublin Supplement the protective shield of the non-statutory labor exemption, and (2) that the enforcement of these collective bargaining provisions constituted a group boycott *per se* unlawful under §§ 1 and 3 of the Sherman Act, 15 U.S.C. §§ 1 and 3 (App. A at 33a-35a; App. C at 97a).

The District Court denied summary judgment and pointed out that the challenged labor provisions were the product of ILA's continuing efforts, in an area of legitimate union concern, to compel NYSA and its members to provide contractual protection for the job security of ILA longshoremen (App. C at 109a), and, further, that the shipping employers finally agreed, unwillingly, to the implementation of these Rules only when given the Hobson's choice of acquiescence or repeated strikes. District Judge Herbert J. Stern held that the adjudication of antitrust liability required a full scale factual inquiry into "the issues of anticompetitive intent and anticompetitive effect" to determine whether the Rules and Dublin Supplement were entitled to immunity from antitrust attack under the doctrine of labor exemption and whether, under a rule of reason analysis, these collective contracts, if found to be non-exempt, constituted reasonable labor provisions not amounting to an unlawful restraint of trade (App. C at 113a-114a). He also remitted for resolution at trial the issue whether respondents were engaged in illegal business enterprises, which he concluded would deprive them of standing to maintain this private anti-

(footnote continued from preceding page)

stevedore company, United Terminals Corp., are defendants in this antitrust litigation (App. A at 4a-5a). Respondents also interposed a separate count against ILA alone under LMRA § 303, 29 U.S.C. § 187 (App. A at 11a). This petition only addresses the portion of the Third Circuit's opinion which relates to respondents' antitrust claims.

trust action (App. C at 114a, 120a). The District Court certified its order denying summary judgment (App. D at 121a-122a) for an interlocutory appeal under 28 U.S.C. § 1292(b) (App. F at 126a-127a). A panel of the Third Circuit then granted respondents permission to appeal under 28 U.S.C. § 1292(b) and Rule 5 of the Federal Rules of Appellate Procedure (App. A at 3a-4a).

B. The Decision of the Court of Appeals

The Court of Appeals panel affirmed the denial of summary judgment against the shipping employers,[8] but reversed the District Court's exposition of the governing law (App. A at 55a, 61a, 67a; App. B at 73a). By a divided vote, the Court constructed a novel and unprecedented regimen of antitrust principles that virtually obliterates the non-statutory labor exemption and imposes upon the collective bargaining process an impractical and unduly onerous code of behavior.

The majority concluded that the prior NLRB determination that the Rules were unlawful under LMRA § 8(e) automatically renders these collectively bargained provisions non-exempt and susceptible to an antitrust injunction under § 16 of the Clayton Act (App. A at 50a).[9] The majority then went on to formulate a separate, distinct, and unprecedented non-statutory labor exemption from the treble damage sanctions of § 4 of the Clayton Act.

---

[8] The panel also reversed the District Court's denial of summary judgment on the LMRA § 303 count. It remanded to the District Court for entry of judgment of liability against ILA and a trial on damages with respect to that count (App. A at 32a-33a, 67a; App. B at 73a).

[9] While the point is not presently material for purposes of this petition, the Third Circuit panel did not consider whether a § 16 injunction, apart from the labor exemption issue, would in any event be forbidden by the provisions of the Norris-LaGuardia Act, 29 U.S.C. § 101, *et seq.* *See, Connell Construction Co.* v. *Plumbers and Steamfitters Local Union No. 100,* 421 U.S. 616, 637 n. 19 (1975).

The majority's four pronged test for this § 4 exemption imposes upon collective bargaining parties the unduly harsh burden of proving all of the following conclusions in order to avoid the imposition of liability under the Sherman Act: (1) the ultimate invalidation of the challenged labor contract under federal labor law was "not reasonably foreseeable" at the time the contract was signed; (2) the contract and its implementation were intimately related to the labor objective believed to be legitimate; (3) the contract was the least competitively restrictive alternative that could have been negotiated; and (4) the collective bargaining parties did not act with any predatory anticompetitive intent to use the labor contract as a device to further the economic interests of the employer signatories (App. A at 54a-55a).

Under this test, the non-statutory labor exemption becomes no more than an ephemeral and meaningless label completely lacking in substance. The Third Circuit majority would require that a challenged labor contract first pass muster under traditional antitrust standards to establish its right of exemption from these very same standards.

In essence then, the Court of Appeals has improperly merged the separate and distinct issues of antitrust exemption and antitrust liability, the effect of which is the demise of the non-statutory labor exemption. This is made clear by the majority's choice (with Circuit Judge Weis dissenting) of the *per se* rule of antitrust analysis. The challenged labor contract, if found to be non-exempt, would, in the majority's view, automatically constitute a *per se* violation of the antitrust laws since "application of the rule of reason is redundant" and has already been "taken into account in determining the scope of the non-statutory labor exemption" (App. A at 59a-60a).

The Court of Appeals remanded to the District Court to determine in the first instance, either after trial or by

summary judgment, the availability, under the Circuit Court's newly forged test, of the "limited defense" of the non-statutory labor exemption to § 4 of the Clayton Act (App. A at 55a; App. B at 73a). Respondents were permitted to pursue their treble damage actions on remand despite their unlawful business operations, since the Court of Appeals concluded that illegality is never a defense to a private antitrust claim (App. A at 63a-65a). Upon petitioners' motion, the Court of Appeals stayed remand pending final disposition of this petition for certiorari.

Reasons for Granting the Writ

1. Novel and Monumental Questions of National Importance

The substantial questions of federal law presented in this case provoked both the District Court and the Court of Appeals to grant the extraordinary remedy of an interlocutory appeal under 28 U.S.C. § 1292(b) (App. A at 3a-4a; App. F at 126a-127a). The District Court granted § 1292(b) certification because it considered the legal issues in this case to be "most difficult", indeed "monumental" and "of national scope and importance" standing "at the crossroads between the labor laws and the antitrust laws" (App. H at 135a-136a). In the District Court's view, "the law that will emerge from this case can have tremendous precedential effect upon the relationships between unions, employers, and third-party businessmen throughout the country" (App. H at 136a). The Court of Appeals agreed with the District Court's appraisal that this was "an exceptional case" worthy of interlocutory review under § 1292(b).[10]

[10] *Link* v. *Mercedes-Benz of North America, Inc.*, 550 F.2d 860 (3d Cir.) (*en banc*), *cert. denied*, 431 U.S. 933 (1977); *Milbert* v. *Bison Laboratories, Inc.*, 260 F.2d 431 (3d Cir. 1958).

The panel that decided the merits underscored the significance and substantiality of the intertwined federal labor and antitrust questions involved in this case. The majority opinion was over 60 pages in length and it is perfectly apparent from that opinion that the majority considered that it was breaking new ground. The decision of the Court of Appeals is important not only because of the significant questions addressed, but also because the majority opinion on each of these questions is in direct conflict with determinations reached by other circuit courts.

2. Non-Statutory Labor Exemption—Conflict With Decisions of This Court and of Other Circuits

The majority's resolution of the issue whether the collectively bargained Rules are entitled to the protection of the non-statutory labor exemption irreconcilably conflicts with the earlier decisions of the Second Circuit in *ICTC*, and in *Commerce Tankers Corp.* v. *National Maritime Union*, 553 F.2d 793 (2d Cir.), *cert. denied*, 434 U.S. 923 (1977). To reiterate, the Second Circuit in *ICTC* held that essentially the same prohibitions at issue here did not violate the antitrust laws.

The majority in the case at bar expressly eschewed as "unpersuasive" the Second Circuit's conclusion in *Commerce Tankers*[11] that a prior finding by the NLRB of a violation of LMRA § 8(e) does not automatically remove the protective aegis of the non-statutory labor exemption from the challenged collective bargaining agreement and activities (App. A at 49a-50a). Instead, the majority held that the NLRB's determination that the Rules were illegal under § 8(e) conclusively renders them non-exempt and susceptible to an antitrust injunction under § 16 of the Clayton Act (App. A at 50a). As the

[11] The similarities between this case and *Commerce Tankers* are striking. *Commerce Tankers* also involved an antitrust attack upon a collective bargaining provision that was alleged to be a group boycott (App. C at 110a-112a).

District Court pointed out in its opinion (App. C at 107a-110a), all of the cases that have considered this issue are contrary to the ruling of the majority. *See, Commerce Tankers; National Dairy Prod. Corp.* v. *Milk Drivers & Dairy Employees, Union Local 680,* 308 F. Supp. 982 (S.D.N.Y. 1970) (which was given collateral estoppel effect in *Scooper Dooper, Inc.* v. *Kraftco Corp.,* 494 F.2d 840 (3d Cir. 1974)); and *Republic Productions, Inc.* v. *American Federation of Musicians,* 245 F. Supp. 475 (S.D.N.Y. 1965).[12]

Although denying exempt status to the Rules under § 16, the majority formulated a separate and distinct non-statutory exemption under § 4 of the Clayton Act. This § 4 exemption was predicated upon "a labor policy consideration which the Supreme Court has not yet addressed: the extent to which antitrust exemption should protect . . . the collective bargaining process" (App. A at 51a). However, the novel and unprecedented test constructed by the majority for this § 4 exemption imposes an unduly onerous and impractical regimen of antitrust standards upon the collective bargaining process. It directly conflicts with the more reasonable test followed by the Second Circuit in *ICTC* and by other courts. *McCourt* v. *California Sports, Inc.,* No. 78-1462 (6th Cir. May 22, 1979); *Redfield* v. *American Federation of Musicians,* No. 78-7530 (2d Cir. Mar. 1, 1979); *California Dump Truck Owners Ass'n, Inc.* v. *Associated General Contractors,* 562 F.2d 607 (9th Cir. 1977); *Embry-Riddle Aeronautical University* v. *Ross Aviation, Inc.,* 504 F.2d 896 (5th Cir. 1974); *Bodine Produce, Inc.* v. *United Farm Workers Organizing Comm.,* 494 F.2d 541 (9th Cir. 1974); *South-East Coal Co.* v. *Consolidation Coal Co.,* 434 F.2d 767 (6th Cir. 1970); *Lewis* v. *Pennington,* 400 F.2d 806 (6th Cir.), *cert. denied,* 393 U.S. 983 (1968).[13]

[12] Significantly, the Second Circuit's affirmance of the NLRB's invalidation of the Rules in *Int'l Longshoremen's Ass'n* v. *NLRB,* 537 F.2d 706, 708 n.1 (2d Cir. 1976), *cert. denied,* 429 U.S. 1041 (1977), which the Third Circuit panel accorded offensive collateral estoppel effect in this case, carefully distinguished that prior decision in *ICTC,* where essentially the same Rules were held exempt from the antitrust laws (App. C at 112a-114a).

The prevailing test of exemption embraced by these courts originated in the opinion of this Court, announced by Mr. Justice White, in *Amalgamated Meat Cutters* v. *Jewel Tea Co.,* 381 U.S. 676 (1965). Justice White concluded that a challenged labor provision is exempt if it is

> [1] intimately related to wages, hours and working conditions . . . [and] the unions' successful attempt to obtain that provision [was] through bona fide, arm's-length bargaining [2] in pursuit of their own labor union policies, and not at the behest of or in combination with nonlabor groups.

Id. at 689-90.[14]

The four pronged labor exemption test adopted by the Court of Appeals in this case includes the two elements of the *Jewel Tea* test. However, the Third Circuit majority has superimposed the additional requirement that the labor provision in issue represent the least competitively

[13] *See also, Murphy Tugboat Co.* v. *Shipowners & Merchants Tugboat Co.,* No. C-74-0189-WWS (N.D. Calif, Mar. 6, 1979); *IBEW, Local Union No. 474* v. *Sammarco Electrical Co.,* —— F. Supp. ——, 100 L.R.R.M. 2629 (W.D. Tenn. Jan. 11, 1979) (Nos. 77-2579 and 78-2040); *Suburban Beverages, Inc.* v. *Pabst Brewing Co.,* 462 F. Supp. 1301 (E.D. Wisc. 1978); *Signatory Negotiating Comm.* v. *Local 9, Int'l Union of Operating Engineers,* 447 F. Supp. 1384 (D. Colo. 1978).

[14] The second part of the *Jewel Tea* test stems from the decisions of this Court in *Allen Bradley Co.* v. *Local No. 3, IBEW,* 325 U.S. 797 (1945) and *UMW* v. *Pennington,* 381 U.S. 657 (1965). *Allen Bradley* and *Pennington,* read together, stand for the proposition that the labor exemption is lost only when the labor contract is part of a labor-management business conspiracy to injure competitors of the employers.

restrictive alternative that could have been negotiated (App. A at 54a).[15] It is suggested by the majority that *Jewel Tea* adopted the "least restrictive alternative" requirement. Neither *Jewel Tea* nor any other collective bargaining case contains this limitation.

3. The Decision Below Effectively Abolishes the Non-Statutory Labor Exemption

The "least restrictive alternative" test effectively annuls the doctrine of labor exemption. The separate questions of antitrust exemption and antitrust liability[16] are merged into a single, indivisible process in which antitrust standards are dominant for all purposes, including the supposed inquiry as to whether those standards should be applied. This merger directly contravenes the holding of *Jewel Tea* that the issue "whether the restraint was unreasonable" is to be held in reserve and only reached after the question of exemption has been resolved. 381 U.S. at 693.

If the "least restrictive alternative" test were to prevail, it would have a devastating impact upon collective bargaining. Hotly contested, strike-marked negotiations would be unduly complicated by the need to apply and agree upon an imperfect and complex calculus of antitrust standards. Imponderable delay would result as each side at the bargaining table struggle to assure that every conceivable alternative has been considered and properly assessed. The potential for impasse would be immeasurably enhanced by the reluctance of parties, unfamiliar with the complexities of antitrust law, to reach an agreement that might expose them to treble damage sanctions. The good faith efforts of businessmen and labor leaders to achieve industrial accord would be subject to second-guessing by lawyers and judges, operating with different motives and under different rules.

[15] The fourth and final prong: that it must not be "reasonably foreseeable" that the labor provision would ultimately be found unlawful under the federal labor statutes (App. A at 54a), is merely an extension of the erroneous principle that the exemption is forfeited by a prior NLRB finding of a § 8(e) violation.

[16] *FMC* v. *Pacific Maritime Ass'n*, 435 U.S. 40, 61 (1978).

The alternatives suggested by the Third Circuit panel: a refusal to bargain, a refusal to implement the agreement or an acquiescence to the agreement followed by the initiation of legal action (App. A at 52a-53a), are even more harmful to the collective bargaining process. The national labor policy of encouraging the peaceful resolution of labor disputes through collective bargaining, 29 U.S.C. § 151, would be thwarted by transforming collective bargaining into a process of sham agreements followed by judicial confrontation.

The ramifications nationwide of the Third Circuit majority's new and more exacting non-statutory labor exemption test upon future collective bargaining negotiations, including those that will soon commence in 1980 in the longshore industry on the North Atlantic, South Atlantic and Gulf Coasts, strongly support the need for this Court's review. This case provides an opportunity for this Court (1) to review issues it "has not yet addressed" (App. A at 51a), (2) to reconcile the conflicting interpretations by the lower courts of the prior decisions in *Allen Bradley, Pennington, Jewel Tea* and *Connell,* and (3) to establish an appropriate and pragmatic accommodation of the overlapping labor and antitrust policies by formulating a non-statutory exemption test that will not unreasonably hinder the collective bargaining process.

4. Rejection of Rule of Reason Is Contrary to Determinations by Other Circuits

The companion issue in this case of the appropriate standard of antitrust analysis, the *per se* or rule of reason

test, produced opposite views on the panel. The majority chose the *per se* rule (App. A at 55a-61a). Judge Weis, dissenting, preferred the rule of reason (App. A at 67a-71a).

The majority's choice represents a significant departure from the current prevailing trend in favor of the rule of reason. *Continental TV, Inc.* v. *GTE Sylvania, Inc.*, 433 U.S. 36 (1977); *cf., Broadcast Music, Inc.* v. *Columbia Broadcasting System, Inc.*, 47 U.S.L.W. 4359 (U.S. Apr. 17, 1979) (Nos. 77-1578 and 77-1583). Its mechanical application of the harsh *per se* rule to an alleged concerted refusal to deal that does not fit within the category of traditional horizontal commercial boycotts among business competitors, is at odds with the results reached in other circuits. *Smith* v. *Pro Football, Inc.*, 503 F.2d 1173, 1177-82 (D.C. Cir. 1978); *Gough* v. *Rossmoor Corp.*, 585 F.2d 381, 386-89 (9th Cir. 1978), *cert. denied*, 47 U.S.L.W. 3571 (U.S. Feb. 26, 1979) (No. 78-1002); *Oreck Corp.* v. *Whirlpool Corp.*, 579 F.2d 126, 131-34 (2d Cir.) (*en banc*), *cert. denied*, —— U.S. ——, 99 S.Ct. 340 (U.S. Oct. 30, 1978) (No. 78-347); *Mackey* v. *National Football League*, 543 F.2d 606, 619 (8th Cir. 1976), *cert. dismissed*, 434 U.S. 801 (1977).[17] Indeed, it is the first and only appellate case that has applied the *per se* rule to challenged labor activities. All of the other cases were decided after, or remanded for, a full evidentiary hearing. *See, Connell; Jewell Tea; Pennington; Smith* v. *Pro Football, Inc.; Commerce Tankers; Mackey; Ackerman-Chillingworth* v. *Pacific Electrical Contractors*, 579 F.2d 484 (9th Cir. 1978), *cert. denied*, —— U.S. ——, 59 L.Ed.2d 56 (U.S. Jan. 9, 1979) (No. 78-703). *See also, Amalgamated Meat Cutters & Butcher Workmen of No. America, Local Union No. 576* v. *Wetterau Foods, Inc.*, —— F.2d ——, 101 L.R.R.M. 2171, 2173 n.6 (8th Cir. May 2, 1979) (No. 78-1726).

[17] The characterization by the majority of the appellate panel below of a horizontal boycott—albeit not the traditional commercial variety—is not supported by the summary judgment record. Respondents were the customers of the steamship carriers—not their competitors. There was no evidence of any competitive relationship between respondents and the stevedores, all but one of which did not operate in respondents' defined market—the New York to Puerto Rico trade. The majority's principal basis for the alleged horizontal boycott, *i.e.*, the competitive relationship between ILA and its rival Teamsters union (App. A at 57a), is not legally sound in view of § 6 of the Clayton Act, 15 U.S.C. § 17, which provides that "the labor of a human being is not a commodity or article of commerce." *Carroll* v. *Protection Maritime Ins. Co.*, 512 F.2d 4, 9-10 (1st Cir. 1975).

The principal reason for the Third Circuit majority's choice of the *per se* rule was its observation that the rule of reason would be a "redundant" exercise already undertaken in adjudicating the majority's "least restrictive alternative" standard for the non-statutory labor exemption (App. A at 59a-60a). Decisions reached both in this Court and in other circuits support the conclusion that an accommodation of the conflicting labor/antitrust policies would best be served by removing any consideration of the reasonableness of the restraint from the labor exemption equation and applying it instead, if the labor exemption is found inapplicable, in evaluating the non-exempt labor contract under a full scale rule of reason antitrust analysis.

Review of the *per se*/rule of reason issue will enable this Court to resolve the sharp conflict in the circuits concerning "the appropriate level of antitrust scrutiny" to be applied to challenged labor activities (App. A at 68a, Weis dissenting), and the consequences of the chosen rule upon the appropriate accommodation of federal antitrust and labor policies.

5. Other Courts Have Denied Standing to Illegal Businesses

The resolution of intercircuit conflicts also arises in this case in connection with the issue of respondents' standing to seek antitrust redress for alleged injury to their illegal business enterprises. The majority concurred with the

cases[18] that have rejected outright the defense of illegality upon the strength of this Court's decision in *Perma Life Mufflers, Inc.* v. *International Parts Corp.*, 392 U.S. 134 1968), but expressly noted the existence of contrary authority in *Cottonwood Mall Shopping Center, Inc.* v. *Utah Power & Light Co.*, 440 F.2d 36 (10th Cir.), *cert. denied*, 404 U.S. 857 (1971) (App. A at 64a). *Cottonwood* does not stand alone. Other cases have also embraced the rule that an illegal business has no legally recognizable business or property interest that is entitled to relief under § 4 of the Clayton Act.[19] As the District Court correctly concluded, the issue here is one of standing—not the application of a common law defense of *in pari delicto*, unclean hands or illegality. "But where plaintiff's entire business operation is conducted in blatant, willful violation of federal law", then plaintiff has no standing to recover damages under § 4 of the Clayton Act since "it has suffered no injury to its business or property which is compensable under the Clayton Act" (App. C at 120a).

---

[18] *Lamp Liquors, Inc.* v. *Adolph Coors Co.*, 563 F.2d 425 (10th Cir. 1977); *Adolph Coors Co.* v. *A&S Wholesalers, Inc.*, 561 F.2d 807 (10th Cir. 1977); *Memorex Corp.* v. *IBM Corp.*, 555 F.2d 1379 (9th Cir. 1977); *Health Corp. of America, Inc.* v. *New Jersey Dental Ass'n*, 424 F. Supp. 931 (D.N.J. 1977), *mandamus denied without opinion sub nom. New Jersey Dental Ass'n* v. *Brotman*, No. 77-1268 (3d Cir. Feb. 24, 1977), *mandamus denied*, 434 U.S. 812 (1977).

[19] *See, Okefenokee Rural Electric Mem. Corp.* v. *Florida Power & Light Co.*, 214 F.2d 413 (5th Cir. 1954); *Maltz* v. *Sax*, 134 F.2d 2 (7th Cir.), *cert. denied*, 319 U.S. 772 (1943); *Pearl Music Co.* v. *Recording Industry Ass'n of Amer., Inc.*, 460 F. Supp. 1060 (C.D. Calif. 1978); *American Bankers Club, Inc.* v. *American Express Co.*, 1977-1 CCH Trade Cas. ¶ 61,247 (D.D.C. Jan. 18, 1977) (No. 76-1730); *Heath* v. *Aspen Skiing Corp.*, 325 F. Supp. 223 (D. Colo. 1971). *Cf., Keogh* v. *Chicago Northwestern Ry. Co.*, 260 U.S. 156 (1922); *Turner* v. *American Bar Ass'n*, 407 F. Supp. 451 (N.D. Ind. 1975), *aff'd without opinion sub nom. Taylor* v. *Montgomery*, 539 F.2d 715 (7th Cir. 1976), and *aff'd sub nom. Pilla* v. *American Bar Ass'n*, 542 F.2d 56 (8th Cir. 1976) (multi-district case); *Martin* v. *Phillips Petroleum Co.*, 365 F.2d 629 (5th Cir.), *cert. denied*, 385 U.S. 991 (1966).

This case involves exceptionally important issues arising within the context of the complex and highly sensitive interplay of federal labor and antitrust policies. These substantial federal questions of national importance warrant review by this Court.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Dated: New York, New York
June 20, 1979

Respectfully submitted,

ALFRED A. GIARDINO
Counsel for Petitioners, New York Shipping Association, Inc.; International Terminal Operating Co., Inc.; John W. McGrath Corp.; Pittston Stevedoring Corp.; and Universal Maritime Service Corp.
LORENZ, FINN, GIARDINO & LAMBOS
25 Broadway
New York, New York 10004
(212) 943-2470

Of Counsel,

CONSTANTINE P. LAMBOS
DONATO CARUSO
NICHOLAS G. MAGLARAS

JAMES W. B. BENKARD
Counsel for Petitioner, Sea-Land Service, Inc.
DAVIS POLK & WARDWELL
One Chase Manhattan Plaza
New York, New York 10005
(212) 422-3400

Of Counsel,

MARY M. HOAG

See 802 961 1 227